IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2436 of 2005()

CC.284/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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PETITIONER:

JAYAPRASAD, S/O. GOPALA KRISHNAN,
SREE JAYA, ORUMANAYOOR P.O., THRISSUR.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE,
H. NAGAR POLICE STATION, PALAKKAD.

2. PRINCIPAL,
KENDRIYA VIDYALAYA NO.1, HEMAMBIKA NAGAR,PALAKKAD.

3. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI;K.S. SIVAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON 16/08/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. M.C. No. 2436 of 2005

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Dated, this the 16th day of August 2007

O R D E R

In this petition filed under Sec. 482 Cr.P.C. the petitioner seeks to quash Annexure B final report and all further proceedings in C.C. 284 of 2003 on the file of the J.F.C.M. - III, Palakkad.

2. The petitioner herein is the 11th accused in Annexure-B final report. He is a Software Engineer who was at the relevant time working in a concern by name Prisons Technology Institute, Thrissur. Originally the case was registered as Crime No. 67 of 2000 of Hemambika Police Station, Palakkad for an offence punishable under Section 417 I.P.C. after obtaining sanction from J.F.C.M. -III, Palakkad. Annexure A is the copy of the F.I.R. The allegation in the F.I.R. was that several unnamed users of Telephone line had misused the Internet account of the 2nd respondent herein namely, the Principal, Kendreeya Vidhyalaya No. I, Hemambika nagar , Palakkad and had thus committed the aforesaid offence. Subsequently, Annexure B final report was submitted for

offences punishable under Sections 406, 379 and 109 I.P.C. against 16 accused persons including the petitioner who was arrayed as A11.

3. After hearing the learned counsel for the petitioner and the learned Public Prosecutor, I am of the view that for the reasons to be mentioned hereinafter, the charge against the petitioner is groundless and wholly unsustainable and it will be an abuse of the process of the court to place the petitioner on trial.

4. The 2nd respondent herein is the Principal, Kendreeya Vidhyalaya, Palakkad who had engaged A1, a Service Engineer for servicing the internet account of the Kendreeya Vidhyalaya. The particulars of the account number was disclosed to A1 who had allegedly revealed it to A2 who in turn had revealed it to the other accused and according to the final report all the accused persons had used the said account causing a loss of Rs. 5,000/- to the Kendreeya Vidyalaya. The name of the petitioner was not in the F.I.R.. Going by the charge-sheet the petitioner who was the 11th accused was a mail faculty of Prisons Technology Institute from where some of the other accused had misused the account.

5. In the first place, there is no specific averment that the petitioner had voluntarily and knowingly used or misused the internet account of Kendriya Vidhayalaya. That apart, it is doubtful whether theft of "internet time" which is alleged by the prosecution will attract an offence punishable under Sec. 379 I.P.C. Internet time or account is not movable property within the meaning of Sec. 378 I.P.C. Going by the definition of movable property under Sec. 22 I.P.C. it includes corporeal property of every distinction except land and things attached to the earth or permanently fastened to anything which is attached to the earth. Thus, only a property which has a corpus or which is tangible alone is included in the definition of theft. In other words, the property covered by Sec. 378 I.P.C should have a body. In *AIR 1965 SC 666* the Apex Court held that abstraction of electricity will amount to a theft in view of the statutory fiction created Sec. 39 of the Indian Electricity Act, 1910 whereunder a person abstracting electricity is deemed to have committed the offence of theft within the meaning the Indian Penal Code. But there is not such statutory fiction available in the case of theft of internet account. internet was unknown at the time when the Indian Penal Code

was enacted. There is nothing in the Information Technology Act, 2000 or the consequential amendment to the Evidence Act making "internet time" or "internet account" movable property for the purpose of Section 378 I.P.C.

5. Even assuming that "internet time" is movable property within the meaning of Section 378 I.P.C., there is no allegation in the charge that the petitioner herein who is A11 had dishonestly used the said account. By virtue of Section 24 I.P.C. whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly. Section 23 I.P.C. defines what is wrongful gain and what is wrongful loss. There is not even a bald allegation that A11 used the internet account or that the user of that account was with the knowledge that it belongs to Kendreeya Vidhyalaya.

6. The argument of the learned Public Prosecutor that even if Sec. 378 is not attracted the charge under Sections 107 and 406 I.P.C. would still be sustainable against the petitioner and Sec. 406 I.P.C. includes intangible property as well, does not appear to be tenable as against the petitioner herein. No doubt, Sec. 406 I.P.C. will take in intangible or incorporeal

property as well. But then the allegation against the petitioner is only with regard to the offence punishable under Section 379 I.P.C. and that too as revealed by A3. An offence punishable under Sec. 379 I.P.C., prima facie, does not appear to have been attracted in view of the fact that internet account is not movable property. There is no allegation that A1 had entrusted the internet account with the petitioner herein (A11) after disclosing it to the petitioner that it was the account of Kendreeya Vidhyalaya.

7. If the evidence which the prosecution proposes to adduce against the petitioner to prove the guilt of the petitioner, even if fully accepted before it is challegend in cross-examination or rebutted by the defence evidence if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. ***(See State of Bihar v. Ramesh Singh – AIR 1977 SC 2018) and B.R. Rairikar v. Uday – 1981 Crl.Law Jounal – 1613 (Bombay High Court).***

In the light of the foregoing discussions it will be tortuous to drag the petitioner a young Software Engineer to the ordeal and trauma of a trial where a conviction is virtually impossible.

It will be an abuse of the process of the court to force the petitioner to stand trial on such allegations. Hence, Annexure B report as well as the proceedings in C.C. 284/2003 on the file of the J.F.C.M. - III, Palakkad so far as they relate to the petitioner herein are quashed.

In the result, this Crl. M.C. is allowed as above.

V. RAMKUMAR, JUDGE

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